

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,

Petitioner,

v.

UNKOWN,

Respondent.

No. 2:20-cv-0744 KJM DB

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. Petitioner alleges he was attacked by officers and denied medical treatment. Presently before the court is petitioner's petition for screening (ECF No. 1) and his motion for leave to proceed under 28 U.S.C. § 1915 (ECF No. 6). For the reasons set forth below the court will dismiss the motion to proceed in forma pauperis as moot and recommend that the petition be dismissed without leave to amend.

IN FORMA PAUPERIS

Petitioner has filed a motion captioned "Motion for leave to proceed under U.S.C. § 1915"¹ (ECF No. 6.) Petitioner has not, however, filed an in forma pauperis affidavit or paid the

¹ Petitioner requests to proceed in forma pauperis and states that he does not have sufficient funds to pay the filing fee and has been unable to obtain a copy of his prison trust account.

1 required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). The court construes this filing as
2 a motion for leave to proceed in forma pauperis. However, the court will deny the motion as
3 moot because, as set forth below, the court will recommend that the petition be dismissed without
4 leave to amend.

5 SCREENING

6 I. Screening Requirement

7 Under Rule 4 of the Rules Governing Section 2254 Cases, this court is required to conduct
8 a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. Pursuant to
9 Rule 4, this court must summarily dismiss a petition if it “plainly appears from the petition and
10 any attached exhibits that the petitioner is not entitled to relief in the district court.”

11 II. The Petition

12 Petitioner alleges that he “is challenging the respondent’s deliberate [destruction of]
13 petitioner’s legal property” and excessive use of force. (ECF No. 1 at 2.)

14 III. Petitioner’s Allegations are not Cognizable in Federal Habeas Actions

15 A. Habeas Claims Must Impact the Fact or Duration of Confinement

16 “Federal law opens two main avenues to relief on complaints related to imprisonment: a
17 petition for habeas corpus, [pursuant to] 28 U.S.C. § 2254, and a complaint under . . . 42 U.S.C. §
18 1983.” Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curium). “Challenges to the validity
19 of any confinement or to particulars affecting its duration are the province of habeas corpus,
20 Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); requests for relief turning on circumstances of
21 confinement may be presented in a § 1983 action.” Muhammad, 540 U.S. at 750.

22 “[H]abeas jurisdiction is absent, and a § 1983 action is proper, where a successful
23 challenge to a prison condition will not necessarily shorten the prisoner’s sentence.” Ramirez v.
24 Galaza, 334 F.3d 850, 859 (9th Cir. 2003). “[T]he essence of habeas corpus is an attack by a
25 person in custody upon the legality of that custody, and . . . the traditional function of the writ is
26 to secure release from illegal custody.” Preiser, 411 U.S. at 484.

27 Here, petitioner’s claim bears no relationship to his underlying sentence. Rather, his
28 claims are related to the conditions of his confinement and any relief would take the form of

1 return or replacement of damaged items or money damages for the harm suffered. Accordingly,
2 petitioner's claim would not have any impact on the length of his incarceration and is therefore
3 outside the scope of habeas jurisdiction. See Blair v. Martel, 645 F.3d 1151, 1157-58 (9th Cir.
4 2011) (Any claim that does not necessarily shorten an inmate's incarceration, if successful, falls
5 outside the scope of habeas jurisdiction.). Thus, because petitioner's claim will not have any
6 impact on the duration of his sentence it falls outside the scope of habeas jurisdiction.

7 **B. Petitioner's Claim is not Eligible for Conversion to a Section 1983 Action**

8 In an appropriate case, a district court can convert a habeas petition into a civil rights
9 complaint. Nettles v. Grounds, 830 F.3d 922, 935-36 (9th Cir. 2016) (en banc). However, the
10 court declines to consider conversion of this action because there are several significant
11 differences in a proceeding in habeas corpus compared to a civil rights action. For instance, the
12 filing fee for a habeas petition is \$5, and if leave to proceed in forma pauperis is granted, as it has
13 been here, the fee is forgiven. For civil rights cases, however, the fee is \$400 and under the
14 Prison Litigation Reform Act the prisoner is required to pay \$350, even if granted in forma
15 pauperis status, by way of deductions from income to the prisoner's trust account. See 28 U.S.C.
16 § 1915(b)(1). A prisoner who might be willing to file a habeas petition for which he or she would
17 not have to pay a filing fee might feel otherwise about a civil rights complaint for which the fee
18 would be deducted from income to his or her account. Also, a civil rights complaint which is
19 dismissed as malicious, frivolous, or for failure to state a claim would count as a "strike" under 28
20 U.S.C. § 1915(g), which is not true for habeas cases. Based on these differences between habeas
21 and civil rights cases, and because, as set forth below, petitioner likely cannot obtain relief under
22 § 1983, the court declines to convert this action to a civil rights case.

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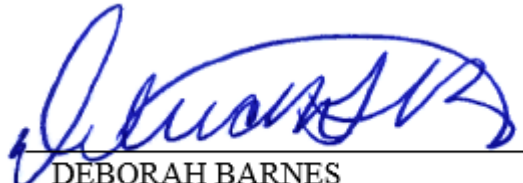
CONCLUSION

For the reasons set forth above, IT IS HEREBY ORDERED that petitioner's motion to proceed in forma pauperis (ECF No. 6) is denied as moot.

IT IS HEREBY RECOMMENDED that the petition (ECF No. 1) be dismissed without leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, petitioner may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 18, 2020



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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